

Cardiobase Standard Terms and Conditions

Version 1.0

Cardiobase Standard Master Agreement

Version 1.0 (110117)

1 ABOUT THIS AGREEMENT

- 1.1 This Agreement applies to the supply of the Solution under one or more Software and Services Schedules.
- 1.2 Together this Agreement and each Software and Services Schedule form a separate Software and Services Agreement.
- 1.3 If the terms of this Agreement and a Software and Services Schedule are inconsistent, then the last named document will prevail to the extent of the inconsistency.
- 1.4 If Cardiobase supplies software and/or services that are not specified in a Software and Services Schedule, then this Agreement will still apply.

2 ORDERING

- 2.1 Cardiobase is not bound to accept any purchase order until the relevant Software and Services Schedule is accepted by the Customer and Cardiobase.
- 2.2 Cardiobase does not warrant or represent that any Software and Services Agreement is consistent with any agreement between the Customer and any other person.
- 2.3 For the avoidance of doubt, any modification to this Agreement expressed in any document of the Customer shall not apply to this Agreement unless expressly accepted in writing by Cardiobase.

3 ABOUT CARDIODATABASE

- 3.1 The Solution enables the Customer to generate information, statistics and reports based on Customer Data. The Customer understands and agrees that:
 - (a) Cardiobase does not warrant the accuracy or completeness of any information, report or statistics generated by the Solution;
 - (b) the Solution is not intended as a substitute for appropriate clinical or other professional advice. It should not be relied upon as the sole basis for doing or not doing anything;
 - (c) the Solution may import Data from other sources. Cardiobase strongly recommends you inspect information, statistics and reports to ensure accuracy, completeness and recognition of imported Data; and
 - (d) the Solution is designed to assist the Customer to conduct its business (or activities) but is not designed to ensure or guarantee performance, conformance or compliance with any relevant law or standard in relation to the care of any patient of the Customer. The Customer remains solely responsible for ensuring compliance with all relevant laws.

4 CARDIODATABASE OBLIGATIONS

- 4.1 Cardiobase will supply the Solution subject to the terms of this Agreement and each Software and Services Schedule.
- 4.2 The Customer acknowledges and agrees that the performance by Cardiobase of its obligation under this Agreement or any Software and Services Agreement may be dependent upon the Customer and third parties performing their obligations.
- 4.3 Subject to the terms of this Agreement or any Software and Services Agreement, the Customer will have no remedy against Cardiobase in relation to any delay or any failure to supply the Solution to the extent that such delay or failure is the direct or indirect result of any act or omission of the Customer, any third party or Force Majeure.
- 4.4 Whilst Cardiobase uses its best endeavours to supply the Solution, Cardiobase does not represent that:
 - (a) the Solution will be complete or free from defects or errors and the Customer acknowledges that the existence of any defects or errors does not constitute a breach of this Agreement or any Software and Services Agreement; or
 - (b) any information supplied or accessed using the Solution is correct and complete or sufficient for the Customer's intended use.
- 4.5 Cardiobase may from time to time, modify, enhance or upgrade the Solution.

5 CUSTOMER OBLIGATIONS

- 5.1 Unless otherwise set out in a Software and Services Schedule, the Customer will:
 - (a) comply with the terms and conditions of each Software and Services Schedule;
 - (b) ensure the Solution is only used for the Customer's own internal business or activities;
 - (c) ensure the Solution is protected at all times from misuse, damage, destruction or any form of unauthorised use and notify Cardiobase immediately if there is any breach of the same;
 - (d) comply with all applicable laws, including but not limited to, all laws in relation to the care of any patient and the handling and use of Personal Information;
 - (e) provide Cardiobase with such assistance as is reasonably necessary to provide the Customer with the Solution including:
 - (i) notifying Cardiobase in writing if the Customer changes any information required to provide the Customer with the Solution;
 - (ii) providing Cardiobase or its authorised representative full and complete access to the Customer's systems and Customer's premises (or any other site specified in a Software

- and Services Schedule) for the purpose of carrying out its rights and obligations under any Software and Services Agreement; and
- (iii) providing such other reasonable assistance that may be required from time to time in order for Cardiobase to provide the Solution to the Customer.
- (f) provide and update from time to time all hardware and software necessary to use the Solution;
- (g) ensure the Customer's personnel are trained in the use of the Solution; and
- (h) assess the accuracy, reliability and completeness of any information obtained using the Solution.

- 5.2 Except as set out in a Software and Services Schedule, the Customer must not (and must ensure that its employees and agents do not):
- (a) do anything that threatens the security, access or performance of the Solution or otherwise impairs the lawful use of the Solution by any person;
 - (b) use the Solution for any purpose other than as intended by the Documentation;
 - (c) provide to any person, other than the Customer's employees or authorised agents, any user ID or password necessary to access and use the Solution;
 - (d) introduce or use any device or software or routine that interferes or attempts to interfere with the operation of the Solution;
 - (e) copy any Documentation except as required by the Customer's employees and contractors for the purposes of enjoying the benefit of the Solution;
 - (f) copy, reproduce, translate, adapt, vary or modify the Solution (or any part thereof), except for temporary use for backup or disaster recovery processing;
 - (g) distribute, rent, lease, sell, charge, sub-license, assign, transfer or otherwise deal with the Solution.

6 SPECIFIC TERMS OF USE

- 6.1 Cardiobase is not responsible for the internet or any telecommunication infrastructure required to access and use the Solution.
- 6.2 Subject to the terms of the Software and Services Schedule, Cardiobase does not and cannot provide any warranty that the internet, any website or any telecommunications infrastructure will be continuously accessible.
- 6.3 The Customer acknowledges and agrees that it is responsible for selecting the appropriate level of security when accessing and using the Solution. Unless agreed in writing, Cardiobase does not and cannot in any way supervise or control the content and form of any information or data accessed by using the Solution.

7 SUPPORT AND MAINTENANCE

- 7.1 The Parties agree that the terms and conditions of the Annexure shall apply in relation to the Support Services and Maintenance Services included with a Software and Services Schedule.
- 7.2 Support and Maintenance Services are subject to Additional Fees.
- 7.3 Unless otherwise stated in this Agreement or any Software and Services Agreement or a Software and Services Schedule, Cardiobase does not include:
- (a) backup services;
 - (b) training, error correction, modifications, New Releases or versions or enhancements or otherwise;
 - (c) attendance at the Customer's premises; or
 - (d) correction of errors or Defects caused by:
 - (i) data entry or operational error;
 - (ii) any use of the Solution which is not reasonably intended by Cardiobase;
 - (iii) faulty equipment or hardware provided by the Customer;
 - (iv) any negligent act or omission by the Customer; or
 - (v) any event beyond Cardiobase's control.

8 HOW AND WHEN ARE CARDIOBASE FEES PAYABLE

- 8.1 Fees payable by the Customer and the manner of payment are set out in each Software and Services Schedule.
- 8.2 Unless otherwise agreed in writing, Fees are payable within 14 days of invoice date.
- 8.3 If the Customer fails to pay any Fees by the required time Cardiobase may require that the Customer pay:
- (a) interest to Cardiobase, on the daily amount outstanding, at the rate applicable under the *Penalty Interest Rates Act 1983* (Vic) until all monies due are paid; and
 - (b) any expense (including legal fees on a full indemnity basis) incurred by Cardiobase in recovering the outstanding Fees from the Customer.
- 8.4 Subject to obtaining the Customer's prior consent where it is reasonable and practical to obtain the same, the Customer will be liable to pay or reimburse the Additional Fees for:
- (a) reasonable travel time required by Cardiobase personnel for the purposes of providing Services to the Customer; and
 - (b) reasonable travel and accommodation costs;
- if Cardiobase personnel are required to travel further than the CBD of an Australian capital city.

- 8.5 Subject to clause 19, Cardiobase may vary any annual renewal Fees and Additional Fees payable pursuant this Agreement or any Software and Services Agreement.

9 GOODS AND SERVICES TAX

- 9.1 If GST is imposed on any taxable supply by Cardiobase in connection with this Agreement or any Software and Services Agreement and the consideration payable is not expressed to be inclusive of GST then, subject to a valid tax invoice being issued, the Party liable to pay for the taxable supply must pay an additional amount calculated by multiplying the value of the GST exclusive consideration (without deduction or set off) by the current GST rate.

10 CARDIOBASE'S LIABILITY

- 10.1 To the full extent permitted by The Australian Consumer Law other than as set out in this Agreement or any Software and Services Agreement, all implied and express warranties in respect of any goods or services provided by Cardiobase are hereby excluded.
- 10.2 Without limiting clause 10.6, Cardiobase will be liable to the Customer:
- (a) where the law implies a term into this Agreement or any Software and Services Agreement which cannot be excluded and Cardiobase breaches that term. However, where the breach relates to goods or services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption and where it is fair and reasonable to do so, Cardiobase liability is limited, at its option, to replacing, repairing, or re-supplying the relevant goods, or re-supplying the relevant services; and
 - (b) if the claim arises from or in connection with any deliberate breach of this Agreement or any Software and Services Agreement or fraud by Cardiobase but subject always to clause 10.4.
- 10.3 Subject to clause 10.2(a), and except to the extent that liability cannot be limited, the aggregate liability of Cardiobase for claims arising out of or in connection with this Agreement or any Software and Services Agreement whether arising in contract, tort (including negligence), indemnity, strict liability, breach of warranty or statute is limited to the total amount paid or payable by the Customer to Cardiobase in the 12 months preceding the relevant cause of action accruing or, if more than one, the last cause of action accruing.
- 10.4 In no event will Cardiobase be liable to the Customer for loss of use, production, profit, revenue, business, data, contract or anticipated savings or for delay or for any financing costs or increase in operating costs or any economic loss for any indirect or consequential loss or damage.
- 10.5 For the purposes of this clause the term Cardiobase will mean Cardiobase, its officers, employees, contractors and agents, whether individually or collectively.
- 10.6 Nothing in this clause 10 is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or the supply of services which cannot be excluded, restricted or modified.
- 10.7 This clause will survive the expiration or termination of this Agreement or any Software and Services Agreement.

11 THE CUSTOMER INDEMNIFIES CARDIOWISE

- 11.1 The Customer releases and indemnifies Cardiowise, its servants and agents against all actions, claims and demands (including the cost of defending or settling any actions, claims and demands) arising out of:
- (a) a breach of this Agreement or any Software and Services Agreement by the Customer;
 - (b) any wilful, unlawful or negligent act or omission by the Customer;
 - (c) any failure to comply with Cardiowise's reasonable instructions in relation to the use of the Solution; or
 - (d) any claim by any third Party as a result of or in connection with the Customer's use of the Solution to conduct or perform any business activity including the care of any patient of the Customer.
- 11.2 This clause will survive the expiration or termination of this Agreement or any Software and Services Agreement.

12 SUSPENSION OF SERVICES

- 12.1 Cardiowise may suspend or restrict access to the Solution (including any Maintenance Services and/or Support Services), on such terms as Cardiowise determines, without notice if any Default Event occurs or in Cardiowise's opinion is likely to occur.

13 TERMINATION

- 13.1 Cardiowise may terminate this Agreement or any Software and Services Agreement by written notice to the Customer if:
- (a) the Customer fails to pay any Fee by the due date;
 - (b) the Customer breaches any provision of this Agreement or any Software and Services Agreement that is not capable of remedy;
 - (c) the Customer breaches any provision of this Agreement or any Software and Services Agreement that is capable of remedy and fails to remedy such breach within 30 days' written notice;
 - (d) a Change of Control occurs and the Customer is a company or the Customer being a natural person, dies;
 - (e) the Customer assigns or purports to assign this Agreement or any Software and Services Agreement;
 - (f) this Agreement or any Software and Services Agreement is terminated; or
 - (g) the Customer is Insolvent.
- 13.2 Either Party may terminate a Software and Services Agreement after the expiration of the relevant Term on 30 day's notice.
- 13.3 This Agreement may be terminated by either Party on written notice once all Software and Services Agreement are terminated or expire.
- 13.4 On the termination or expiry of a Software and Services Agreement:
- (a) the Customer will cease to be entitled to access and use the Solution;
 - (b) the Customer must pay all outstanding Fees to Cardiowise;
 - (c) the Customer must return or destroy (at Cardiowise's option) all Cardiowise Intellectual Property and Cardiowise Materials in the Customer's possession or control including any media containing Cardiowise and Documentation; and
 - (d) the Parties will continue to comply with all obligations expressed herein to continue to apply after the expiration or termination of this Agreement or any Software and Services Agreement.
- 13.5 Termination of this Agreement or any Software and Services Agreement will not prejudice any accrued rights or liabilities of a Party.

14 OWNERSHIP AND LICENCE

- 14.1 All Intellectual Property Rights in the Solution and the Cardiowise Materials (including any Improvements made by the Customer) are vested in Cardiowise and are hereby assigned to Cardiowise. For the avoidance of doubt, there is no assignment of Intellectual Property Right in the Solution to the Customer.
- 14.2 The Customer's rights to the Solution are as a licensee only. Cardiowise reserves all rights to the Solution not expressly granted to the Customer.
- 14.3 Cardiowise acknowledges that, subject to any lien and the terms of this Agreement or any Software and Services Agreement, the Customer Data remains the Customer's property and Cardiowise will not disclose, sell, assign, license or otherwise dispose of Customer Data to any person unless compelled to by Law.
- 14.4 The Customer hereby grants to Cardiowise a non-exclusive, royalty free, worldwide licence to use, copy, adapt and distribute the Customer Data to:
- (a) perform its obligations pursuant to this Agreement or any Software and Services Agreement;
 - (b) create statistics, databases and compilations for use by Cardiowise and third parties PROVIDED THAT Cardiowise will not disclose the Customer Data in any manner that identifies:
 - (i) the Customer Data as the Customer's;
 - (ii) any brand or trade mark of the Customer; or
 - (iii) any person, including any patient, individually.

15 TRANSITION OUT

- 15.1 The Disengagement Period will commence on the date of termination of this Agreement or a Software and Services Agreement and will continue until the earlier of:
- (a) 6 months after the date of the notice; and
 - (b) the date on which the Customer notifies Cardiobase that it no longer requires the Disengagement Services.
- 15.2 The Parties must comply with the Disengagement Plan during the Disengagement Period.
- 15.3 The Customer will pay Cardiobase the Disengagement Fees.
- 15.4 The Parties must review and update the Disengagement Plan annually.

16 CONFIDENTIALITY

- 16.1 A Party will not, without the prior written approval of the other Party, disclose the other Party's Confidential Information or use the other Party's Confidential Information other than for the purposes of this Agreement or any Software and Services Agreement.
- 16.2 A Party will not be in breach of sub-clause 16.1 in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- 16.3 Each Party shall take all reasonable steps to ensure that its employees, and agents, and any sub-contractors engaged for the purposes of this Agreement or any Software and Services Agreement, do not make public or disclose the other Party's Confidential Information.
- 16.4 Notwithstanding any other provision of this clause, either Party may disclose the terms of this Agreement or any Software and Services Agreement (other than Confidential Information of a technical nature) to its Related Bodies Corporate, solicitors, auditors, insurers or accountants, and shall ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to that Party.
- 16.5 This clause shall survive the expiration or termination of this Agreement or any Software and Services Agreement.

17 NON SOLICITATION

- 17.1 Neither Party will solicit or otherwise induce any employee of the other to leave their employment during the term of this Agreement or any Software and Services Agreement or 6 months thereafter.

18 FORCE MAJEURE

- 18.1 Neither the Customer nor Cardiobase will be liable for any delay or failure to perform its obligations pursuant to this Agreement or any Software and Services Agreement if such delay is due to Force Majeure.
- 18.2 If a delay or failure of a Party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that Party's obligations will be suspended (other than any obligation to pay any Fees due).
- 18.3 If the delay or failure by a Party to perform its obligations due to Force Majeure exceeds 60 days, either Party may immediately terminate the Agreement on providing written notice to the other Party.

19 CARDIODASE MAY VARY THIS AGREEMENT

- 19.1 Cardiobase may, from time to time, upon 30 days' notice in writing to the Customer vary this Agreement or any Software and Services Agreement.
- 19.2 If the Customer does not accept any variation, the Customer must give Cardiobase 21 days written notice terminating this Agreement or any Software and Services Agreement (as the context requires).
- 19.3 If the Customer fails to give written notice, this Agreement or any Software and Services Agreement will be deemed to include the variation at the expiration of the 30 days' notice from Cardiobase.

20 OTHER LEGAL MATTERS

20.1 Public Statements

Cardiobase may refer generally to the Customer acquiring products and services from Cardiobase in its marketing, promotional or other like materials.

20.2 Lien

Cardiobase will have a lien on all Customer Data for all sums whatsoever due at any time to Cardiobase by the Customer.

20.3 Further Acts

Each Party agrees to do all things that may be necessary or desirable to give full effect to every part of this Agreement or any Software and Services Agreement if asked in writing by another Party to do so.

20.4 Assignment

The Customer must not assign, transfer, subcontract or otherwise dispose of, in whole or in part of the Customer rights or obligations under this Agreement or any Software and Services Agreement, without the prior written consent of the other Party (which consent will not be unreasonably withheld). Cardiobase may assign or novate this Agreement or any Software and Services Agreement to a third Party on written notice.

20.5 Subcontractors

Cardiobase may subcontract the performance of this Agreement or any Software and Services Agreement or any part thereof. Cardiobase acknowledges that it continues to be bound by this Agreement or any Software

and Services Agreement notwithstanding that any part of this Agreement or any Software and Services Agreement has been sub-contracted to a third Party.

20.6 **Provisions Severable**

If any provision of this Agreement or any Software and Services Agreement is invalid, illegal or unenforceable in any respect the validity, legality and enforceability of the remaining provisions will not be affected and such invalid, illegal or unenforceable provision is to be severed from the relevant agreement.

20.7 **Waiver**

Failure by any Party to exercise or delay in exercising any right, power or remedy under this Agreement or any Software and Services Agreement does not prevent its exercise. A waiver must be in writing signed by the Party giving the waiver.

20.8 **Notice**

Where in this Agreement or any Software and Services Agreement Cardiobase is required to give notice in writing, Cardiobase may give the same by emailing the notice to the email address last provided to Cardiobase by the Customer.

20.9 **Governing Law**

This Agreement is governed by and construed in accordance with the laws of the State of Victoria, Australia and the Parties irrevocably submit to the exclusive jurisdiction of the Courts in that State.

21 WHAT DO CERTAIN WORDS AND PHRASES MEAN

In this Agreement or any Software and Services Agreement:

- (a) "ADDITIONAL FEE" means a charge in accordance with Cardiobase's standard rates in effect from time to time.
- (b) "AGREEMENT" means this Master Agreement.
- (c) "ANALYSIS" means:
 - (i) result sets of queries generated by the Solution or Cardiobase against:
 - (a) Customer Data; and
 - (b) any other Data; or
 - (ii) any other information or report generated by the Solution or in respect of the use of the Solution.
- (d) "CARDIOBASE" means Cardiobase Pty Ltd (ABN 34 081 470 528) and includes any related body corporate.
- (e) "CARDIOBASE MATERIALS" means all Analysis, query sets and result sets and information generated, compiled, arranged or otherwise developed by Cardiobase in the course of providing the Services.
- (f) "CHANGE OF CONTROL" will be deemed to have occurred if any person acquires a controlling interest in the Customer. For the purposes of this definition a person has a controlling interest in a corporation if the person has a relevant interest (as defined in the Corporations Act) in aggregate more than fifty per cent of the issued or voting shares in a corporation.
- (g) "COMPULSORY UPDATES" means an Update which is deemed by Cardiobase to be compulsory.
- (h) "CUSTOMER" means the person named and described in Item 1 of the Schedule.
- (i) "CUSTOMER DATA" means all Data posted, uploaded or otherwise transmitted by the Customer in the course of accessing or using the Solution.
- (j) "CONFIDENTIAL INFORMATION" means the terms and conditions of this Agreement or any Software and Services Agreement and, in relation to a Party (and for the purposes of this definition, "Party" shall include a Party's Related Bodies Corporate), all trade secrets, ideas, concepts, know how, knowledge and any other information whether in writing or otherwise, relating to any of that Party's products, services, systems, affairs, businesses, strategies, or employees whether owned by, licensed to, or otherwise in possession or control of that Party, which are disclosed to the other Party by that Party or otherwise obtained by the other Party, its employees, agents, or contractors under, in contemplation of, or in connection with this Agreement or any Software and Services Agreement, but excluding any information which:
 - (i) is available in the public domain otherwise as a result of a breach of confidence by any Party or
 - (ii) is lawfully received from a third Party or
 - (iii) is lawfully in the possession of the other Party at the date of this Agreement or any Software and Services Agreement.
- (k) "DATA" includes data and information that has been reformatted or converted on to a different media or has been modified (and whether authorized or not), and includes revisions, updates and re-issues;
- (l) "DEFAULT EVENT" means the events listed in clause 13.1.
- (m) "DISENGAGEMENT FEE" means the charges specified in the Disengagement Plan for the work to be carried out by Cardiobase in complying with the Disengagement Plan.
- (n) "DISENGAGEMENT PERIOD" means the period referred to in clause 15.1.
- (o) "DISENGAGEMENT PLAN" means a plan agreed in writing for the orderly disengagement of the Solution and the Customer's Systems.
- (p) "DISENGAGEMENT SERVICES" means the services to be supplied by Cardiobase pursuant to the Disengagement Plan.
- (q) "DOCUMENTATION" includes Cardiobase user and training manuals including instructions and "how to" information as amended from time to time.
- (r) "FEE" means individually and collectively the fees payable by the Customer pursuant to a Software and Services Schedule and any Additional Fees.

- (s) "FORCE MAJEURE" means a circumstance beyond the reasonable control of a Party which results in that Party being unable to observe or perform on time an obligation under this Agreement or any Software and Services Agreement. Such circumstances will include:
- (i) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disasters;
 - (ii) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;
 - (iii) strikes and embargos;
 - (iv) internet outage, power, water, telecommunications or other utility shortage; and
 - (v) valid laws, rules, regulations, orders or decrees of the Federal or State Government or of any local government or of any statutory authority.
- (t) "IMPROVEMENTS" means any improvement, extension, adaptation, enhancement or further development.
- (u) "INSOLVENT" means:
- (i) unable to pay debts as and when they fall due or become insolvent or make an assignment, arrangement or composition for the benefit of its creditors or discontinue or cease to carry on business in Australia;
 - (ii) has a receiver or receiver manager appointed to the whole or any parts of its assets, or if a mortgage in possession or a controller is appointed in respect of any of its assets, or if a resolution is passed for its winding up;
 - (iii) is presented with an application for its winding up or is served with a notice pursuant to the *Corporations Act* which pertains to an amount of money owed by it and which is not bona fide in dispute and such notice remains outstanding for 21 days or more.
- (v) "INTELLECTUAL PROPERTY" means all present and future registered and unregistered copyright, trademarks, designs, patent, semi-conductor or circuit layout rights resulting from intellectual activity in the electronic industrial, scientific, literacy or artistic fields.
- (w) "MAINTENANCE SERVICES" means the services set out in Item 1(a) of the Annexure in respect of the Solution.
- (x) "NEW RELEASE" means any new release or version of the Solution issued from time to time, including any major update, enhancement, extension or replacement of the functionality of the Solution.
- (y) "PARTY" means a party to this Agreement or any Software and Services Agreement.
- (z) "PERSONAL INFORMATION" means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion which is received or learnt by a Party from any source as a consequence of or in the performance of its rights and obligations under this Agreement or any Software and Services Agreement.
- (aa) "RELATED BODIES CORPORATE" means all related bodies corporate of a Party (as defined in the *Corporations Act 2001 (Cth)*).
- (bb) "SERVICES" means the services to be supplied by Cardiobase pursuant to this Agreement or any Software and Services Agreement.
- (cc) "SOFTWARE AND SERVICES AGREEMENT" means each agreement for the supply of the Solution comprising this Agreement or any Software and Services Agreement and a Software and Services Schedule.
- (dd) "SOFTWARE AND SERVICES SCHEDULE" means a schedule describing the Solution software and/or services to be supplied to the Customer and any additional terms and conditions of supply.
- (ee) "SOLUTION" includes a media-based software or web-based application developed and owned by Cardiobase comprising the software and services described in a Software and Services Schedule including Updates and Documentation and any Improvements to the same.
- (ff) "SUPPORT SERVICES" means the services set out in Item 1(b) of the Annexure.
- (gg) "TERM" means the term described in each Software and Services Schedule.
- (hh) "UPDATE" means an enhancement, modification, update or upgrade of the Solution that maintains or improves existing functionality within the Solution but which may not provide additional or new functionality and does not include a New Release.
- (ii) A reference to an "Item" is a reference to an item in the Schedule.
 - (jj) A reference to any Party or other person includes that person's successors and permitted assigns.
 - (kk) A reference to this or any other document includes a reference to that document as amended, supplemented, novated or replaced from time to time.
 - (ll) A reference to a person includes a natural person, corporation, partnership, trust, estate, joint venture, sole partnership, government or governmental subdivision or agency, association, co-operative and any other legal or commercial entity or undertaking.
- (mm) Where a Party comprises two or more persons any Agreement or obligation to be performed or observed by that Party binds those persons jointly and each of them severally, and a reference to that Party is deemed to include a reference to any one or more of those persons.
- (nn) Unless the contrary intention applies, words defined in this Agreement or any Software and Services Agreement have the same meaning in a Module Schedule and vice versa.
- (oo) The words "include" and "including" mean "including but not limited to".
- (pp) The headings in this Agreement or any Software and Services Agreement do not affect its interpretation.

SCHEDULE

Item 1:

CUSTOMER

Company Name: As per invoice details

Address: As per invoice details State: As per invoice details

Phone: As per invoice details Email: As per invoice details

**ANNEXURE
MAINTENANCE AND SUPPORT ANNEXURE**

Item 1: Maintenance & Support Services

(a) Support Services

- Reasonable telephone support in respect of the use and operation of the Solution during Basic Support Hours.
- Fault Support in accordance with the terms and conditions set out in this Maintenance and Support Annexure.
- For the avoidance of doubt, Support Services do not include:
 - Professional Services; or
 - Emergency Support.Professional Services and Emergency Support shall be subject to Additional Fees.

(b) Maintenance Services

- Access to Updates and New Releases as and when available to all Cardiobase customers.

(c) Prepaid Support

If the Software and Service Schedule includes Prepaid Support, the number of included Prepaid Support Hours to be used at the option of the Customer on:

- Professional Services; and
- Emergency Support.

Prepaid Support is optional and shall be subject to Additional Fees.

Item 2: Response Time

Severity Level	Standard Response Time (BUSINESS HOURS)	Application
One - Major	4 Hours	A fatal system error in the Solution that prevents all useful work from being performed
Two - Minor	24 Hours	An error that prevents the use of some non-critical functions of the Solution or the Solution does not perform in accordance with the Documentation
Three - Request	24 Hours	A Problem or query that does not prevent the operation of the Solution

1 CARDIOBASE'S OBLIGATIONS

1.1 Subject to payment of all Fees, the Solution will provide the Customer with:

- (a) Maintenance Services; and
- (b) Support Services.

- 1.2 For the avoidance of doubt, Cardiobase may charge an Additional Fee if the Customer has failed to accept a Compulsory Update within 90 days of notice of the same.
- 1.3 Unless otherwise set out herein, chargeable Support Services (including any travel to the Customer's premises) are calculated and charged in 15 minute units. If the time taken for a particular task does not precisely amount to 15 minute units, the time may be rounded up or down at Cardiobase' discretion.
- 1.4 Unless otherwise stated in this Annexure, Support Services do not include resolution of any Faults:
- (a) resulting from any unauthorised modification to the Solution or in breach of the Agreement;
 - (b) associated with data entry or operational errors; or
 - (c) relating to any products and /or services other than those supplied by Cardiobase.

2 CUSTOMER OBLIGATIONS

- 2.1 The Customer will:
- (a) co-operate fully with Cardiobase in relation to the diagnosis of any Fault or providing the Support or Maintenance Services; and
 - (b) appoint the Customer Contact as the sole point of contact between the Customer and Cardiobase in respect of the provision of Support and notify Cardiobase of any change to the Customer Contact.
- 2.2 Where relevant, ensure that Cardiobase has full and safe access to the Customer's premises and any necessary equipment, data, materials and information and all sites and services reasonably required for Cardiobase to comply with this Annexure.
- 2.3 If after due investigation a Fault reported by the Customer reveals that no such Fault exists, or that the Fault is unrelated to the Solution (including any fault in the computer system, software or hardware of the Customer), then Cardiobase may charge an Additional Fee in respect of all investigations and actions undertaken.

3 CUSTOMER TO REPORT FAULTS

- 3.1 The Customer will ensure the Customer Contact provides Cardiobase with the following information in relation to each Fault notified to Cardiobase:
- (a) contact name, phone number and email address;
 - (b) the product and/or service experiencing the Fault;
 - (c) the description of the Fault; and
 - (d) the impact on the Customer's business.

4 PREPAID SUPPORT

- 4.1 If Cardiobase supplies Prepaid Support to the Customer, Cardiobase may deduct the time expended from the Prepaid Support Hours outstanding to the credit of the Customer.
- 4.2 Subject to the terms hereof, Fees paid in respect of Prepaid Support are non-transferable, non-refundable and are not redeemable for cash. Fees paid in respect of Prepaid Support may be set off against the following:
- (a) Prepaid Support Hours taken in advance (with the approval of Cardiobase); and
 - (b) any monies owed to Cardiobase.
- 4.3 Unused Prepaid Support Hours expire at the expiration or termination of this Agreement.

5 SUPPORT RESPONSE TIMES

- 5.1 Once Cardiobase has been notified of a Fault, Cardiobase will use its best endeavours to contact the Customer's nominated personnel and provide an initial response within the relevant Response Time.
- 5.2 Cardiobase will use its best endeavours to include the following information in the initial response:
- (a) additional Customer Data required.
 - (b) suggested re and specific actions required of the Customer.
 - (c) any Additional Fees or charges payable.
- 5.3 Cardiobase will notify the Customer's nominated personnel as often as it considers reasonable having regard to the nature of the Fault including providing any variation of the estimate for service restoration set out in the initial response.

6 SERVICE RESTORATION

- 6.1 Cardiobase will use its best endeavours to resolve any Fault as soon as practicable after the notification of a Fault but does not make any commitment to restore any product or service within any particular time notwithstanding the provision of any estimate for service restoration.

- 6.2 Service restoration may be dependent upon third Parties or the Customer's technical personnel undertaking certain works. Cardiobase may not be able to effect a restoration of any Cardiobase product and/or service unless and until the same is completed.

7 CARDIOBASE AVAILABILITY

- 7.1 The Customer acknowledges that where the Solution is made available online it may be subject to Outages from time to time.
- 7.2 Cardiobase will use its best endeavours to schedule Scheduled Outages at times of minimum disruption.

8 WORDS AND PHRASES

In this Annexure:

- (a) "ANNEXURE" means this Maintenance and Support Annexure.
 - (b) "BASIC SUPPORT HOURS" means 9:00am to 5:00pm Monday to Friday AEST – Excluding national public holidays.
 - (c) "OUTAGE" means a period in which the Solution is unavailable, whether a Scheduled Outage or not.
 - (d) "EMERGENCY SUPPORT" means the supply of Support outside Basic Support Hours.
 - (e) "FAULT" means an issue or fault with a product and/or service supplied by Cardiobase which affects the continuous availability or performance of that product or service.
 - (f) "PRE PAID SUPPORT HOURS" means the total number of hours of Prepaid Support purchased by the Customer in advance.
 - (g) "PROFESSIONAL SERVICES" means:
 - (i) Report customization;
 - (ii) any training/consulting in any Cardiobase product and/or services; and
 - (iii) Services that do not relate to a Fault.
 - (h) "RESPONSE TIME" means the time commencing when the call details are received by Cardiobase service desk, to the time when Cardiobase service desk operator first contacts the Customer for the call. Response times are calculated in Basic Support Hours only.
 - (i) "SCHEDULED OUTAGE" means an Outage that is planned by Cardiobase or its service providers.
 - (j) Words defined in the Agreement have the same meaning in this Annexure.
-

Cardiobase Software and Services Schedule

This is a Software and Services Schedule referred to in the Master Agreement between the Customer detailed in Item 1 of this Software and Services and Cardiobase. This Software and Services Schedule and the Master Agreement form a Software and Services Agreement. Defined terms from the Master Agreement have the same meaning in this Software and Services Schedule.

Document prepared
13 May 2019

Item 1: Customer

Company Name: As per invoice details

Shipping Address: As per invoice details

Suburb: As per invoice details State: As per invoice details Postcode: As per invoice details

Phone: As per invoice details Fax: As per invoice details

Billing Address: As per invoice details

Suburb: As per invoice details State: As per invoice details Postcode: As per invoice details

Phone: As per invoice details Fax: As per invoice details

Item 2: Term

Item 3: The Solution

Item Code	Item	Qty	Cost*	Payment	Total
	As per invoice details				
				Subtotal excluding GST	
				GST	
				Total including GST	

* (insert currency)

Item 4: Payment terms

As per invoice details

Item 5: Licenced Users

As per invoice details

Item 6: Additional Customer Obligations

As per invoice details

Item 7: Assumptions

As per invoice details

Item 8: Special Conditions

As per invoice details

Item 9: Third Party Software

As per invoice details

Item 10: Excluded Software and Services

As per invoice details

As per invoice details

Cardiobase Pty Ltd

Contact: As per invoice details
Title: As per invoice details
Email: As per invoice details
Date: As per invoice details

Contact: As per invoice details
Title: As per invoice details
Email: As per invoice details
Date: As per invoice details

Signature:

Signature:

CARDIOBASE TERMS AND CONDITIONS

1 TERM

1.1 This Software and Services Schedule will:

- (a) Commence on Commencement Date and will continue until the expiry of the period referred to in Item 2 unless lawfully terminated earlier.
- (b) Unless otherwise provided in Item 8, this Software and Services Schedule will automatically renew for a further term of 12 months (and thereafter) unless either party gives 90 days written notice, prior to the expiration of the then current term, that it does not wish to renew.

2 CARDIOBASE CONFIGURATION

2.1 Cardiobase will;

- (a) configure the Solution; and
- (b) integrate the Solution and the Customer's Systems,

in accordance with the agreed Configuration Brief.

2.2 For the avoidance of doubt, Cardiobase may exercise discretion in configuring and/or integrating the Solution with any Customer Systems to the extent that such discretion is consistent with the Configuration Brief.

2.3 The Customer will, at its sole cost and expense, provide Cardiobase:

- (a) all Customer Information in such form and in the timeframes reasonably required by Cardiobase;
- (b) all information and access required to integrate the Solution and the Customer Systems;
- (c) such other information, ideas or suggestions necessary or desirable relating to the configuration of the Solution and/or integration of the Customer Systems and the Solution; and
- (d) notice of any intended change to the Customer Systems that may adversely impact the integration of the Customer Systems and the Solution.

2.4 Cardiobase may charge the Customer an Additional Fee if:

- (a) the Customer fails to perform any obligation contained in the Configuration Brief within a reasonable time of being requested to do so by Cardiobase;
- (b) Cardiobase has provided written notice to the Customer to perform their obligation; and
- (c) the Customer has not performed their obligation within 14 days of the notice (or such other period as the Parties agree in writing).

2.5 If Cardiobase considers that the configuration and integration of the Solution is complete, Cardiobase will notify the Customer.

2.6 If the Customer, acting reasonably, considers that the Solution has not been substantially configured in accordance with the Configuration Brief, the Customer must immediately notify Cardiobase and provide Cardiobase with details of the failure. Cardiobase will correct any failure at its own cost.

2.7 The Customer will promptly issue a notice of acceptance if it considers that the Solution has been substantially configured in accordance with the Configuration Brief. The Customer will be deemed to have accepted the Solution if it has not notified Cardiobase of a failure in accordance with clause 2.6 within 14 days of the notice referred to in clause 2.5.

3 CHANGE REQUESTS

- (a) The Customer may request changes or variations to the Solution by submitting a written request to Cardiobase describing the nature of the change requested ("Change Request"). The Customer will provide all such information and assistance as is reasonably required to enable Cardiobase to consider and deal with the Change Request.
- (b) Cardiobase will, as soon as practicable, advise the Customer of:
 - (i) whether or not it is willing to implement the Change Request;
 - (ii) the amounts (if any) proposed to be charged by Cardiobase for implementing the Change Request;
 - (iii) any changes to the terms and conditions of this Agreement which may be required to implement the Change Request; and
 - (iv) any impact which implementation of the Change Request is expected to have on the ability of Cardiobase to perform its obligations under this Agreement.
- (c) Cardiobase will have no obligation to proceed with a Change Request until such time as both Parties agree in writing. Cardiobase may charge an Additional Fee for investigating and responding to a Change Request submitted by the Customer.

4 LICENCE

- 4.1 Subject to the terms of this Agreement, Cardiobase grants to the Customer a non-exclusive, non-transferable and revocable licence for the Term to access and use the Solution for:
- (a) the number of Licenced Users; and
 - (b) in connection with a single geographic facility only.

5 Cardiobase OBLIGATIONS

- 5.1 Cardiobase will, subject to the terms of the Software and Services Agreement:
- (a) supply the Solution; and
 - (b) supply the Maintenance and Support Services in respect of the Solution.
- 5.2 The Customer acknowledges that the matters or items described in Item 10 are expressly excluded from this Software and Services Schedule.

6 Customer Obligations

- 6.1 The Customer will:
- (a) comply with the additional obligations set out in Item 6 (if any); and
 - (b) procure the Third Party Software(if any).
- 6.2 The Customer acknowledges that the supply of the Solution is subject to:
- (a) the Customer complying with paragraph 6.1 of this Schedule; and
 - (b) the assumptions described in Item 7 remaining correct and accurate.
- 6.3 Cardiobase offers no warranty in respect of the Third Party Software and accepts no responsibility for a failure by the Third Party Software to conform to relevant product specifications or warranties or for any failure of the Solution as a consequence of a defect in the Third Party Products or any incompatibility of Third Party Software.

7 SPECIAL CONDITIONS

This Software and Services Schedule is subject to the special conditions (if any) set out in item 8.

8 Warranty

- 8.1 Subject to this clause 8, for the duration of the Warranty Period, Cardiobase warrants that the Solution will operate in conformity with the Configuration Brief in all material respects.
- 8.2 If at any time during the Warranty Period the Customer believes there is a Defect, the Customer shall notify Cardiobase of such perceived Defect immediately.
- 8.3 Cardiobase shall investigate the perceived Defect notified pursuant to clause 8.2 and shall, upon the verification of the existence of the Defect, rectify such Defect without Additional Fee to the Customer.
- 8.4 If after due investigation by Cardiobase of a Defect reported pursuant to clause 8.2 reveals that no such Defect in fact exists, or that the error or Defect is unrelated to the Solution (including any fault in the computer system, software or hardware of the Customer), Cardiobase may charge an Additional Fee in respect of such investigation.
- 8.5 Cardiobase shall not be liable under this clause to the extent that a defect is caused by any act or omission of the Customer or a third Party, including the failure of the Customer or a third party to maintain the operating environment designated in the Configuration Brief or to otherwise use the Solution in accordance with specifications or directions issued by Cardiobase from time to time, whether in the Configuration Brief or otherwise.
- 8.6 Subject to the terms of the Master Agreement, the Customer's sole remedy in the case of a breach of the warranty referred to in clause 8.1 will be the rectification of Defects in accordance with clause 8.3. Cardiobase will not otherwise be liable to the Customer in respect of any breach of such warranty.

9 HOW AND WHEN ARE FEES PAYABLE

- 9.1 The Customer will pay the Fees as set out in Item 4.
- 9.2 The Fees will be payable as follows:
- (a) Upfront once off Fees will be payable upon signing.
 - (b) Installation Fees will be payable as milestone payments as agreed between the Customer and Cardiobase.
 - (c) Annual licence Fees will be payable annually in advance
 - (d) Additional Fees will be payable upon invoice in arrears.
- 9.3 In addition to any other rights, if the Customer fails to pay any amounts payable under the Software and Services Agreement by the required time and until full outstanding payments are made, Cardiobase may:
- (a) cease providing the Solution to the Customer; and
 - (b) disconnect the Solution. Reconnection is subject to a Fee of \$1,000.00 to be paid prior to reconnection.
- 1.2 Additional charges apply if travel and accommodation expenses are incurred.

2 WORDS AND PHRASES

In this Software and Services Schedule:

- (a) "ANNUAL LICENCE FEES" means any Fees described as "Annual Licence Fees" in Item 3.
- (b) "COMMENCEMENT DATE" means the date this Schedule is signed by the last Party to.
- (c) "CONFIGURATION BRIEF" means the requirements for the Solution including all agreed requirements as to quality, functionality, performance, interoperability with the Customer's Systems, testing and other matters.
- (d) "CUSTOMER SYSTEMS" means the customer's computer systems described in the Configuration Brief.
- (e) "FEES" means the fees set out in Item 3.
- (f) "INSTALLATION FEES" means any Fees described as "Installation Fees" in Item 3.
- (g) "LICENSED USERS" means the number of concurrent users described in Item 5.
- (h) "ONCE OFF FEES" means any Fees described as "Once Off Fees" in Item 3
- (i) "SCHEDULE" means this Software and Services Schedule.
- (j) "SOLUTION" means the software and services described in Item 3.
- (k) "THIRD PARTY SOFTWARE" means the software described in Item 9.
- (l) "TERM" means the period described in paragraph 1.1(a) of this Schedule and includes any Disengagement Period.
- (m) "WARRANTY PERIOD" means the period of 12 months commencing on the Commencement Date.
- (n) A reference to an Item is a reference to an item in this Schedule.